

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

United States of America,  
  
Plaintiff,  
  
v.  
  
Murrell Vailes,  
  
Defendant.

Case No. 2:22-cr-00104-JAD-BNW

**REPORT AND RECOMMENDATION**

**I. Introduction**

Before the Court is Defendant Vailes' motion to suppress. ECF No. 22. The government opposed the motion (ECF No. 26), and Vailes replied (ECF No. 29). The Court held a hearing at which the parties stipulated to the admission of the exhibits filed in support of their briefs. ECF No. 32. No testimony or other evidence was admitted into the record. *Id.*

The basic facts of the case are as follows: Las Vegas Metropolitan Police Department (LVMPD) began investigating Vailes for pandering in 2022. *See* ECF No. 22-1 at 4 (the warrant). After a short investigation, LVMPD obtained a search warrant to search Vailes' apartment and his two vehicles. *See* ECF No. 22-1. While executing the warrant, officers observed methamphetamine and several firearms in Vailes' apartment. ECF No. 31-2 at 3-4 (the piggyback warrant). Officers also observed a firearm inside Vailes' Range Rover. *Id.* at 4. Officers paused the search and obtained a piggyback warrant to seize these items. *Id.* As a result of these seizures, Vailes was indicted on two counts: being a felon in possession of a firearm and possession with intent to distribute methamphetamine. ECF No. 1 (indictment).

Vailes now challenges the warrant on two grounds. ECF No. 22. Vailes argues (1) that the warrant was not supported by probable cause and (2) that it was overbroad. *Id.* Vailes argues that because the warrant violated the Fourth Amendment, the evidence seized under the piggyback warrant is the fruit of the poisonous tree and must be suppressed. ECF No. 29 at 11-12. The government disagrees, arguing that the warrant was supported by probable cause and was not

1 overbroad. ECF No. 26. According to the government, to the extent the warrant was overboard,  
2 the doctrine of severance applies and allows for the lawful portions of the warrant to be upheld.  
3 *Id.* at 24. At bottom, and assuming any illegalities, the government also relies on the good faith  
4 exception to the exclusionary rule to argue that the evidence should not be suppressed. *Id.* at 24-  
5 28.

6 The Court will recommend that Vailes' motion be denied. As discussed in more detail  
7 below, there is no need for the Court to analyze whether probable cause existed for the warrant, as  
8 it finds that the good faith exception to the exclusionary rule applies. In essence, even if the warrant  
9 was not supported by probable cause, it was not so deficient that officers could not reasonably rely  
10 on it in good faith. Regarding overbreadth, Vailes has not carried his burden to show that the  
11 warrant was overbroad. Accordingly, the Court recommends that Vailes' motion be denied.

12 In support of this recommendation, the Court summarizes the evidence and analyzes the  
13 facts under the applicable law.<sup>1</sup>

## 14 **II. Background**

15 Detective Perez provided the following information in his affidavit in support of the  
16 warrant. ECF No. 22-1.

### 17 **A. Detective Perez's Training and Experience**

18 Detective Perez had been employed with LVMPD for three years. *Id.* at 2. He was  
19 assigned to the Vice Section and had been a detective with LVMPD for one month. *Id.* He  
20 participated in specialized training in pimp and prostitution subculture. *Id.* at 4.

### 21 **B. Vailes' Conduct at the Gas Station and Burger King**

22 On February 6, 2022, LVMPD conducted an operation in which an undercover female  
23 detective posed as a prostitute in a Burger King parking lot. *Id.* at 4.

24 While the undercover officer was in the Burger King parking lot, Vailes pulled into a  
25 nearby gas station in a Ranger Rover. *See id.* He exited his vehicle and watched the undercover  
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27 <sup>1</sup> Vailes presented several complicated Fourth Amendment issues in his motion. However, he did not examine these  
28 issues with much particularity. In the future, the Court encourages counsel to provide more in-depth briefing into the  
nuisances of the law.

1 officer and another woman. *Id.* The woman talked to a tow truck driver and then walked away. *Id.*  
2 at 4-5. Vailes then drove close to the woman, had a conversation, and drove away. *Id.* at 5.

3 Vailes then drove into the Burger King parking lot. *Id.* Vailes approached the undercover  
4 officer and said, "What's up snow bunny?" *Id.* In the prostitution subculture, "snow bunny" means  
5 a white female prostitute. *Id.* Vailes introduced himself as "Pimp Hard," explaining this is his  
6 name because he pimps hard. *Id.* In the prostitution subculture, "pimp hard" refers to raising  
7 quotas, reducing rest time, and/or forcing prostitutes to take customers they would normally avoid.  
8 *Id.* Vailes and the undercover detective then talked for about fifteen minutes. *Id.*

9 Vailes told the undercover detective that women engage in prostitution for him. *Id.*

10 Vailes said he gives the prostitutes that work for him "good instructions" to follow while  
11 engaging in prostitution. *Id.* at 5. He said that he could provide guidance to the undercover officer,  
12 too. *Id.* at 6. In this vein, Vailes told the undercover detective that she should not be working the  
13 Tropicana Corridor and could earn more working in the casinos. *See id.* The undercover officer  
14 explained that she was nervous to work at the casinos because she did not want to get arrested. *Id.*  
15 Vailes advised her that it was okay to get arrested because prostitution was only a misdemeanor.  
16 *Id.* Vailes further explained that he does not frequent the track (where prostitutes engage in  
17 prostitution) to teach his sex workers how to engage in prostitution but is instead "more of a  
18 virtual teacher." *Id.* at 5, 6. He also stated that he would give his workers the "tools to use while  
19 they engage in prostitution; however, he cannot be out there with them while engaging in  
20 prostitution and stays at his home." *Id.* at 6.

21 Vailes also said that he frequently travels state to state with sex workers while they engage  
22 in prostitution. *Id.* at 6.

23 Vailes ultimately asked the undercover officer if she was ready to "choose up." *Id.*  
24 "Choose up" is phrase used to describe when a prostitute chooses a pimp to work for. *See id.* at 5-  
25 6. Vailes advised her that he requires a choose up fee, which is a fee that a pimp expects a  
26 prostitute to pay to show her loyalty "in exchange for knowledge of the game." *Id.* Vailes said his  
27 choose up fee would be whatever the undercover officer made that night engaging in prostitution.  
28

1 *Id.* at 6. He also said he would continue to expect all the money she made while prostituting in  
2 exchange for assistance with housing, transportation, and bills. *Id.*

3 The affidavit does not indicate how the undercover officer responded to Vailes' request  
4 that she choose up. *See id.* at 6. However, before Vailes left the undercover officer, they  
5 exchanged numbers. *Id.*

6 **C. Additional Surveillance of Vailes**

7 After Vailes left the Burger King, officers surveilled him. *Id.* at 6-7. He "was observed  
8 's[w]eating' multiple girls on the Tropicana Corridor . . . ." *Id.* at 7. "Sweating" is a term used in  
9 the prostitution subculture to refer to a pimp verbally putting pressure on a sex worker to work for  
10 him. *Id.*

11 **D. February 6, 2022 Texts Between Vailes and the Undercover Officer**

12 The same evening Vailes met the undercover officer, he messaged her. *Id.* He asked how  
13 much money she made, to which she replied she made \$90. *Id.* He then began giving her advice  
14 on how to make more money. *See id.* He told her to "keep a trick at the ATM machine." *Id.* When  
15 she said that she had a date (i.e., a prostitution client) later, he said, "Break him, tell him your car  
16 messed up and you need \$800 for a new engine." *Id.* She responded, "800?" *Id.* He said, "Yeah,  
17 thinking big." *Id.* She responded that she would try and that the date said he would pay \$100 for  
18 sexual intercourse. *Id.* Vailes responded, "That's just a sample. Keep him paying [] 5 to 10  
19 minutes max." *Id.*

20 **E. February 8, 2022 Communications Between Vailes and the Undercover**  
21 **Officer**

22 On February 8, 2022, the undercover officer texted Vailes. *Id.* During the conversation,  
23 Vailes texted the undercover officer a picture of his "cash app," which is a phone application to  
24 send money. *Id.* He said, "If you're serious about choosing up, I need that choosing fee to make it  
25 official." *Id.* The officer responded that she only had cash and that she was serious about Vailes.  
26 *Id.*

1 Later that day, Vailes called the undercover officer. *Id.* The undercover officer said that  
2 she was likely not going to be on the Tropicana Corridor later, as she was tired. *Id.* at 8. Vailes  
3 responded that he would be in that area later and expected his fee. *Id.*

4 **F. February 9, 2022 Communications Between Vailes and the Undercover**  
5 **Officer**

6 On February 9, 2022, Vailes called the undercover officer. *Id.* Vailes said that he had  
7 plans to go to San Diego. *Id.* However, he asked if he could stop by on his way out of town to  
8 collect his choose up fee. *Id.* She said “no” (as her cousin would be around). *Id.*

9 Vailes also stated that he was trying to move the undercover officer into his home and  
10 help her move her belongings. *Id.*

11 Vailes called the undercover officer again on February 9, 2022. *Id.* He told her that he was  
12 in San Bernardino on a track where his “bottom” and another sex worker were currently engaged  
13 in prostitution.<sup>2</sup> *Id.* He said they were getting a lot of dates and would not leave until they were  
14 ready to come back with him to Las Vegas. *Id.*

15 **G. February 15, 2022 Communications Between Vailes and the Undercover**  
16 **Officer**

17 On February 15, 2022, Vailes called the undercover officer. *Id.* Vailes told her that she  
18 needed to make up her mind and “stop moving [on] her own accord.” *Id.* He said that she needed  
19 to follow his instructions or “you don’t need me.” *Id.* Vailes told her that she needed to work on  
20 her communication, and she texted later that she was. *Id.* at 8-9.

21 Later in the day, Vailes texted the undercover officer to go “turn some dates.” *Id.* at 9.

22 **H. Surveillance of Vailes’ Apartment**

23 Police conducted a records-check that revealed that Vailes’ Ranger Rover was parked at  
24 Whispering Waters Apartment every night. *Id.* On February 8 and 14, 2022, police also observed  
25 Vailes’ Ranger Rover parked at these apartments outside Building K. *Id.*

26 During multiple surveillances conducted at Vailes’ residence, no one was observed  
27 entering or exiting Vailes’ apartment. *Id.*

28 <sup>2</sup> A “bottom” is a sex worker who is at the top of the hierarchy of sex workers for a particular pimp. *Id.*

1           **I.       Vailes' Arrest**

2           On February 16, 2022, Detective Perez was conducting surveillance outside Vailes'  
3 apartment with other detectives. *Id.* at 9-10. Detective Perez observed Vailes in a Chevy Impala  
4 parked in front of Building K. *Id.* at 10. When Vailes exited the Chevy, detectives arrested him  
5 for pandering. *Id.*

6           One detective then interviewed Vailes' neighbor, who said that Vailes was the only person  
7 he observed living at the apartment in question. *Id.* The detective also received leasing  
8 information from the apartment complex, which indicated that Vailes was the only person  
9 registered to the apartment. *Id.*

10          Officers then obtained the warrant to search Vailes' apartment and vehicles. ECF No. 31-1  
11 at 13.

12           **J.       The Purpose of the Warrant**

13          Detective Perez stated at the beginning of his affidavit that he was investigating the crime  
14 of "Pandering which occurred at the Burger King" on Tropicana. ECF No. 22-1 at 2. He stated  
15 that there was probable cause to believe that the items listed below would be found in Vailes'  
16 apartment, Ranger Rover, and Chevy Impala. *Id.* at 3. The items sought to be seized included:

- 17           A.       Items of prostitution such as condoms, lubrication, records of prostitution  
18 activity, including but not limited to ledgers, diaries, journals, organizers,  
19 B.       Currency including coins, papers, notes, debit cards, credit cards, and gift  
cards.  
20 C.       Cellular phones, personal computers, electronic storage devices, and  
similar electronic items.  
21 D.       Limited items of personal property which [t]end to establish a possessory  
22 interest in the items sought to be seized pursuant to this Search Warrant, to  
23 include but not limited to personal identification, photographs, utility  
company receipts[,], addresses envelopes [sic], rent receipts, etc.

24          *Id.* Detective Perez stated that these items "constitute evidence" tending to show the offense of  
25 "Pandering" had been committed. *Id.*

26          Later in the warrant, Detective Perez stated that he prayed for the search and seizure of  
27 "possessory items" "to locate additional victims of sex trafficking." *Id.* at 10.  
28

1 Detective Perez also provided several statements about why Vailes would have the items  
2 sought. He stated:

- 3 1. “[C]ellular devices are commonly used for communication with potential  
4 victims of sex trafficking.” *Id.*
- 5 2. “It is in my training and experience that persons involved in prostitution  
6 activity will often keep records, ledgers, and diaries documenting the  
7 business of prostitution and/or keep track of monies earned, customer lists  
8 and owe sheets.” *Id.*
- 9 3. “Pimps and prostitutes also need certain tools of the trade such as cellular  
10 telephone[s] and business cards to apply the prostitution trade and to  
11 communicate with each other and customers that seek out other illegal  
12 services.” *Id.*
- 13 4. “It is also known that panderers/human traffickers will often give their  
14 victims that work for them condoms to use during sex acts.” *Id.* at 11.
- 15 5. “[P]imps and human traffickers will frequently be in possession of items  
16 documenting travel to various cities. Prostitution is a transient activity and  
17 pimps/human traffickers will frequently transport prostitutes to other cities  
18 in order to work . . .” *Id.*
- 19 6. “It is also common for pimps/human traffickers to keep photographs of the  
20 prostitutes who work for them . . . These photographs are also used to  
21 advertise on the internet. Often these images will be stored on discs,  
22 cellphones, computers, electronic tablets, digital cameras or taken with  
23 disposable and/or regular film cameras.” *Id.*
- 24 7. “Pimps and human traffickers will commonly be in possession of large  
25 amount[s] of money due to [] most commercial sex customers paying in  
26 cash . . .” *Id.*

27 Based on all the information provided by Detective Perez, the state court judge issued the  
28 warrant. *Id.*

Vailes now challenges the issuance of this warrant.

### 21 **III. Analysis**

#### 22 **A. The Warrant Sought Evidence of Pandering, Not Sex Trafficking**

23 At the outset, the Court addresses Vailes’ argument (as developed more fully during oral  
24 argument) that the warrant was “really” about sex trafficking (not pandering), and therefore, the  
25 Court should analyze whether there was probable cause to search Vailes’ apartment and vehicles  
26 for evidence of sex trafficking. As explained below, the Court disagrees with this argument.

27 The warrant included facts suggesting that Vailes pandered women (as opposed to sex  
28 trafficked women) and sought evidence of that offense. Several facts support this conclusion.

1 First, the affiant explained that he was investigating the crime of pandering (*id.* at 2) and stated  
2 that the items sought to be seized tended to show that pandering had been committed (*id.* at 3).  
3 Second, and of particular importance, the affidavit explained that probable cause for *pandering*  
4 had been developed. *Id.* at 9. Third, the affidavit provides many facts that support the notion that  
5 Vailes pandered the undercover officer and other women (as discussed in more detail below) and  
6 provides *no details* about Vailes sex trafficking anyone. *See* ECF No. 22-1. Fourth, the warrant  
7 notes that the items to be seized would demonstrate that the crime of pandering had been  
8 committed. ECF No. 31-1 at 13. The Court would need to ignore all these statements and facts to  
9 conclude that the warrant relates to sex-trafficking as opposed to pandering.

10 By contrast, the warrant did not seek to locate sex trafficking victims. Vailes' argument  
11 that the warrant seeks sex trafficking victims is based on the following sentence in the affidavit:  
12 "Your affiant prays for the search and seizure of *possessory items* located inside Vailes[']  
13 residence and both vehicles in an attempt *to locate additional victims of sex trafficking.*" ECF No.  
14 22-1 at 10 (emphasis added). To the extent Vailes argues that officers were attempting to locate  
15 *victims* inside Vailes' residence and vehicles, the warrant does not support this argument; the  
16 warrant states that officers were looking for "possessory items." *Id.*

17 Further, whether officers were looking for the items sought to be seized for the incidental  
18 purpose of later locating additional victims of sex trafficking is irrelevant to whether the warrant  
19 was properly issued based on a pandering offense. *See United States v. Ewain*, 88 F.3d 689, 694  
20 (9th Cir. 1996) (ulterior motives do not determine whether a warrant was properly issued).  
21 "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."  
22 *Whren v. United States*, 517 U.S. 806, 813 (1996). "[T]he Fourth Amendment's concern with  
23 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the  
24 subjective intent." *Id.* at 814. Indeed, the Ninth Circuit has upheld searches when a warrant is  
25 issued for one crime and officers purposefully look for evidence of another crime in the places  
26 they could lawfully search. *See, e.g., Ewain*, 88 F.3d 689. "A policeman's pure heart does not  
27 entitle him to exceed the scope of a search warrant, nor does his ulterior motive bar a search  
28 within the scope of the warrant, where the warrant was properly issued." *Id.* at 694. Accordingly,



here, it is irrelevant if officers hoped the evidence of pandering (such as ledgers, journals, owe sheets, cell phones, etc.) would help them locate victims of sex trafficking.

Because the Court finds that the warrant sought evidence tending to show Vailes committed a pandering offense, the Court need not analyze whether there was probable cause to believe Vailes' apartment or vehicles would contain evidence of sex trafficking.

**B. The Good Faith Exception Applies to the Search of Vailes' Home and Range Rover for Evidence of Pandering, Even if Probable Cause Did Not Exist**

**i. Probable Cause**

The Fourth Amendment provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. IV. In other words, warrants must (1) be supported by probable cause and (2) specifically describe both the place to be searched and what is to be seized.

"Probable cause exists when, under the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *United States v. Luong*, 470 F.3d 898, 902 (9th Cir. 2006); *see United States v. SDI Future Health, Inc.*, 568 F.3d 684, 703 (9th Cir. 2009) (providing same rule).

When analyzing whether probable cause exists to search for certain items, courts may rely on an officer's training and experience explaining that people who commit certain types of crimes will likely possess certain evidence. *See, e.g., United States v. Martinez*, 811 F. App'x 396, 399 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2526 (2021); *United States v. Crews*, 502 F.3d 1130, 1136-37 (9th Cir. 2007).

For probable cause to exist to search a particular place, there must be a sufficient nexus between the place to be searched and the evidence sought. *Crews*, 502 F.3d at 1136-37 ("For probable cause, an affidavit must establish a reasonable nexus between the crime or evidence and

the location to be searched.”); *see also Johnson v. Walton*, 558 F.3d 1106, 1111 (9th Cir. 2009) (probable cause to search a home exists when there is “a sufficient nexus between the residence and the contraband sought.”). The relevant question is whether it would be reasonable to seek the evidence sought in the place to be searched. *United States v. Ruiz*, 758 F.3d 1144, 1148 (9th Cir. 2014) (the issuing-judge need not conclude that the evidence is more likely than not in the place to be searched; the judge need only conclude that it would be reasonable to search for the evidence there); *Johnson*, 558 F.3d at 1111 (to search a particular residence, the issuing-judge must conclude it would be reasonable to seek the evidence at the residence); *Crews*, 502 F.3d at 1137 (“It need only be reasonable to seek the evidence at the location indicated in the affidavit.”). In making this determination, judges may “draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.” *Blight v. City of Manteca*, 944 F.3d 1061, 1067 (9th Cir. 2019) (cleaned up); *United States v. Terry*, 911 F.2d 272, 275 (9th Cir. 1990) (same rule).

Before determining whether a warrant was supported by probable cause, however, courts “may proceed directly to” whether the good faith exception applies. *Crews*, 502 F.3d at 1136. Thus, the Court turns to that analysis.

## **ii. The Good Faith Exception**

Evidence seized pursuant to a facially valid search warrant that later is held to be invalid may still be admissible, if officers acted in good faith and in reasonable reliance on the warrant. *United States v. Underwood*, 725 F.3d 1076, 1085 (9th Cir. 2013); *United States v. Kow*, 58 F.3d 423, 428 (9th Cir. 1995). “The government bears the burden of proving that reliance upon the warrant was objectively reasonable.” *Kow*, 58 F.3d at 428; *see also United States v. Camou*, 773 F.3d 932, 944 (9th Cir. 2014) (“The burden of demonstrating good faith rests with the government.”).

“A warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.” *United States v. Leon*, 468 U.S. 897, 922 (1984) (cleaned up). However, the officer’s reliance on the judge’s determination that the warrant is sufficient must still be objectively reasonable. *Id.*

1 An officer's reliance on a warrant will *not* be objectively reasonably

2 (1) where the affiant recklessly or knowingly placed false information in the  
3 affidavit that misled the issuing judge; (2) where the judge wholly abandons his or  
4 her judicial role; (3) where the affidavit is so lacking in indicia of probable cause  
5 as to render official belief in its existence entirely unreasonable; and (4) where the  
6 warrant is so facially deficient—i.e., in failing to particularize the place to be  
7 searched or the things to be seized—that the executing officers cannot reasonably  
8 presume it to be valid.

9 *Underwood*, 725 F.3d at 1085 (cleaned up).

10 Here, the parties' dispute about whether the good faith exception applies centers around  
11 whether the affidavit was so lacking in indicia of probable cause that it rendered officers' belief in  
12 it entirely unreasonable. *See* ECF No. 22 at 12-13; ECF No. 26 at 24-28; ECF No. 29 at 12. An  
13 affidavit falls to this level when it does not provide even a "colorable argument" for probable  
14 cause. *Underwood*, 725 F.3d at 1085. A "colorable argument" is made when thoughtful,  
15 competent judges could disagree about the existence of probable cause. *Id.*

16 **a. There Was a Colorable Argument for Probable Cause to**  
17 **Believe that Vailes Was Engaged in Pandering**

18 There was more than a colorable argument for probable cause to believe that Vailes  
19 pandered multiple women. ECF No. 22-1. Pandering is the act of inducing an adult (without  
20 physical force or threat of force) to become a prostitute or to continue engaging in prostitution.  
21 Nev. Rev. Stat. Ann. § 201.300(1) (West); *see* ECF No. 22-1 at 9 (alleging Vailes violated this  
22 statute). The affidavit detailed how Vailes tried to induce the undercover officer to continue  
23 prostituting for him. ECF No. 22-1 at 5-6, 7, 8-9. He also told her that he had other women  
24 working for him as prostitutes. *Id.* at 5, 6. At one point, he also informed her that he was in San  
25 Bernadino with other prostitutes who were working for him. *Id.* at 8.<sup>3</sup>

26  
27 <sup>3</sup> The Court agrees with Vailes that Detective Perez did not provide any facts to support his conclusion that officers  
28 saw Vailes "sweating" other women. *See id.* at 6-7. As such, the Court does not rely on this assertion in the affidavit.  
*See Underwood*, 725 F.3d at 1081 ("Conclusions of the affiant unsupported by underlying facts cannot be used to  
establish probable cause.").

**b. There Was a Colorable Argument for Probable Cause to Believe that Vailes Possessed the Items Sought to be Seized**

The affidavit provided a colorable argument that Vailes had at least some of the items sought.<sup>4</sup> In other words, and as explained below, thoughtful, competent judges could disagree about whether probable cause existed to search for the items sought.

The warrant sought records of prostitution activity (ECF No. 22-1 at 3), and Detective Perez noted that (based on his training and experience) panderers often keep records of monies earned, customer lists, and other documents relating to their prostitution business (*id.* at 10). *See United States v. Chavez-Miranda*, 306 F.3d 973, 978 (9th Cir. 2002) (“issuing judges may rely on the training and experience of affiant police officers.”); *United States v. Chiochuu*, No. 217CR00306JCMPAL, 2019 WL 3310461, at \*5 (D. Nev. Apr. 10, 2019) (“An officer’s ‘first hand knowledge’ of a defendant’s criminal conduct, combined with the officer’s ‘experience’ with other individuals who committed similar crimes, provides a ‘substantial basis’ for a magistrate judge to determine that probable cause exists.”).<sup>5</sup> The warrant sought travel documents (*id.* at 3), and Detective Perez noted that pimps frequently possess items documenting travel to various cities (*id.* at 11). Additionally, Vailes told the undercover officer that he frequently travels state-to-state with sex workers (*id.* at 6) and was in San Bernadino with sex workers on February 9, 2022 (*id.* at 8). The warrant sought currency (*id.* at 3), and Detective Perez noted that pimps commonly possess large amounts of money because most prostitution customers pay in cash (*id.* at 11). Additionally, Vailes attempted to collect his choose up fee from the undercover officer in cash (after he could not collect it over his cash application). *Id.* at 7-8. The warrant sought cell phones (*id.* at 3), and Detective Perez noted cell phones are commonly used to communicate with victims (*id.* at 10). The affidavit also suggests that Vailes was using a cell phone to call and text

<sup>4</sup> To the extent there was not probable cause, or at least a colorable argument for probable cause, that Vailes would have all the evidence sought, this goes to whether the warrant was overbroad and will be discussed below.

<sup>5</sup> The Court acknowledges that Detective Perez only had three years of experience with LVMPD and one month as a detective when he authored his affidavit. ECF No. 22-1 at 2. While this is not the lengthiest experience, the Court has not found any controlling authority suggesting that the issuing-judge was *not* entitled to rely on the detective’s training and experience because of its duration. Accordingly, the Court is left with Ninth Circuit precedent that explicitly allows the issuing-judge to rely on Detective Perez’s training and experience.

1 the undercover detective about her prostituting for him.<sup>6</sup> *See* ECF No. 22-1. These facts would  
 2 permit a thoughtful, competent judge to conclude that there was a fair probability that Vailes  
 3 possessed at least some of the items sought. *See Underwood*, 725 F.3d at 1085 (a “colorable  
 4 argument” is made when thoughtful, competent judges could disagree about the existence of  
 5 probable cause).

6 **c. There Was a Colorable Argument for Probable Cause to**  
 7 **Believe that Vailes Lived at the Apartment to be Searched**

8 There was more than a colorable argument for probable cause that Vailes’ lived at the  
 9 apartment that was searched. Detective Perez received leasing information from the apartment  
 10 complex indicating that the apartment was leased to Vailes. *Id.* at 10. Additionally, a neighbor  
 11 indicated that Vailes lived at the apartment. *See id.* Finally, the affidavit established that the  
 12 Range Rover officers saw Vailes driving parked at the apartment every night. *Id.* at 9. All this  
 13 evidence suggested that Vailes lived at the apartment that was searched.

14 **d. There Was a Colorable Argument for Probable Cause that the**  
 15 **Evidence Sought Would be Kept at Vailes’ Apartment**

16 There was a colorable argument for probable cause that the evidence sought would be  
 17 kept at Vailes’ apartment. That is, thoughtful and competent judges could disagree about whether  
 18 it was reasonable to search Vailes’ apartment for the items sought. *See Underwood*, 725 F.3d at  
 19 1085 (a “colorable argument” is made when thoughtful, competent judges could disagree about  
 20 the existence of probable cause); *Ruiz*, 758 F.3d at 1148 (probable cause exists to search a  
 21 particular place if it is reasonable to search for the evidence there). In other words, a thoughtful,  
 22 competent judge could believe it was reasonable to search Vailes’ apartment for the items sought  
 23 based on reasonable inferences about where the evidence was likely to be kept. *See Blight*, 944  
 24 F.3d at 1067 (judges may “draw reasonable inferences about where evidence is likely to be kept,  
 25 based on the nature of the evidence and the type of offense.”). Here, a thoughtful, competent  
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27 <sup>6</sup> While defense counsel noted at the hearing that officers found Vailes’ cell phone on his person when he was  
 28 arrested, this fact was not stipulated to or otherwise admitted into evidence. As such, the Court cannot and does not  
 consider it.

1 judge could believe it was reasonable that Vailes would keep evidence of his pandering activities  
2 (such as cash, records of prostitution activity, and travel documents) in his residence.

3 The Ninth Circuit reached a similar conclusion in *Johnson v. Walton*, 558 F.3d 1106 (9th  
4 Cir. 2009). In that case, officers had evidence that a business was a front for a prostitution house.  
5 *Id.* at 1108-09. Officers also had information that the woman who owned and operated the  
6 business/prostitution house lived at a particular address (separate from the business). *Id.* Officers  
7 obtained a warrant to search her home without anything explicit indicating that evidence of her  
8 crimes would be located at her home. *See id.* at 1109. The Ninth Circuit upheld the warrant under  
9 the good faith exception. *Id.* at 1111-12. The court explained that

10 [a] better warrant application in this case would have explicitly stated that, in [the  
11 officer's] investigative experience, she knows that owners of prostitution houses  
12 often keep evidence of these illegal businesses, including money from the  
13 businesses, in their homes. Nevertheless, [the officer's] affidavit is not so lacking  
in indicia of probable cause so as to render a reasonable officer's belief in the  
existence of probable cause unreasonable.

14 *Id.* at 1111.

15 Based on all these facts, the Court finds that the affidavit provided at least a colorable  
16 argument that probable cause existed to search Vailes' apartment for evidence of pandering. Like  
17 in *Johnson*, a better warrant application in this case would have explained that in Detective  
18 Perez's training and experience, pimps usually keep evidence of their pandering activities (such  
19 as cash and travel documents) in their homes. However, the affidavit was not so lacking in indicia  
20 of probable cause that the items would be in Vailes' apartment so as to render an officer's belief  
21 in it unreasonable.

e. **There Was a Colorable Argument for Probable Cause that the Evidence Sought Would Be Kept in Vailes' Range Rover<sup>7</sup>**

There was a colorable argument for probable cause to believe that Vailes' owned or controlled the Ranger Rover. Officers saw Vailes driving the Range Rover the night that he met the undercover officer and asked her to work for him. ECF No. 22-1 at 4, 5. A records check also revealed that the Range Rover parked outside Vailes' apartment every night. *See id.* at 9.

The affidavit provided a colorable argument that Vailes would have at least some of the items sought in his Range Rover. Thoughtful and competent judges could disagree about whether it was reasonable to search the Range Rover for the items sought. *See Underwood*, 725 F.3d at 1085 (a "colorable argument" is made when thoughtful, competent judges could disagree about the existence of probable cause); *Ruiz*, 758 F.3d at 1148 (probable cause exists to search a particular place if it is reasonable to search for the evidence there). In other words, a thoughtful, competent judge could believe it was reasonable to search the Range Rover for some of the items sought based on reasonable inferences about where the evidence was likely to be kept.<sup>8</sup> *See Blight*, 944 F.3d at 1067 (judges may "draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense."). Here, a thoughtful, competent judge could believe it was reasonable that Vailes would keep evidence of his pandering activities (such as cash, travel documents, items of prostitution, and items of a possessory interest) in the Range Rover. The affidavit indicated that Vailes pandered women from this vehicle, as he did with the undercover officer. ECF No. 22-1 at 4-5. As such, a colorable argument for probable cause existed to search the Range Rover.

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<sup>7</sup> The Court will not analyze whether probable cause existed to search the Chevy Impala. No evidence was found in the Chevy Impala. *See* ECF No. 31-2 (piggyback warrant describing the firearms and narcotics evidence found in Vailes' apartment and Range Rover). Accordingly, even assuming for the sake of argument that no probable cause existed to search the Chevy Impala, the remedy would be for the Court to sever this portion of the warrant. *See Greenstreet v. Cnty. of San Bernardino*, 41 F.3d 1306, 1309 (9th Cir. 1994) (there must be probable cause to search each location in a multi-location search warrant); *United States v. SDI Future Health, Inc.*, 568 F.3d 684, 707 (9th Cir. 2009) (court may sever those portions of the warrant that are invalid and preserve the rest). And Vailes has not advanced any argument regarding why severing the Chevy Impala from the warrant should change the Court's conclusion.

<sup>8</sup> Again, whether it was reasonable to search for all the items in the Ranger Rover will be dealt with in the overbreadth section.



**f. Officers Acted in Good Faith and In Reasonable Reliance on the Warrant**

Having concluded that the affidavit was not so lacking in indicia of probable cause so as to render officers' belief in it unreasonable, the Court turns to whether the officers otherwise acted in good faith and in reasonable reliance of the warrant. The record supports the conclusion that officers reasonably relied on the warrant in good faith. Officers obtained a telephonic search warrant from a state court judge. ECF No. 22-1. District Attorney Frank LoGripippo reviewed the warrant before Detective Perez presented it to the state court judge. *Id.* at 12. Having a district attorney review a warrant before submitting it to a judge supports the notion that officers reasonably believed the warrant was supported by probable cause. *Messerschmidt v. Millender*, 565 U.S. 535, 553–55 (2012). Accordingly, the Court finds that officers acted in good faith in relying on the warrant, and the government met its burden to show that the good faith exception applies (based on the records admitted into evidence).

**C. Vailes Did Not Carry His Burden to Show that the Warrant Was Overbroad**

Having established that the good faith exception cures any deficiencies there may have been regarding the existence of probable cause to believe items of pandering would be found in Vailes' home or car, the Court next turns to whether the warrant was overbroad.

The burden is on the defendant who seeks to suppress evidence obtained pursuant to a warrant to show that the warrant was defective. *Chin Kay v. United States*, 311 F.2d 317, 321 (9th Cir. 1962); *United States v. Washington*, No. CR S-11-00345 KJM, 2012 WL 3638227, at \*6 (E.D. Cal. Aug. 22, 2012) (“When the results of a warrant-based search are challenged in a motion to suppress, the defendant bears the burden of demonstrating that the search is unreasonable under the Fourth Amendment.”).

The Fourth Amendment requires that a warrant specifically describe both the place to be searched and the person or things to be seized. *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986). The Ninth Circuit describes this requirement as one of “specificity” and has “distinguished its ‘two aspects’: ‘particularity and breadth . . . Particularity is the requirement that the warrant must clearly state what is sought. Breadth deals with the requirement that the scope of



1 the warrant be limited by the probable cause on which the warrant is based.” *United States v. SDI*  
 2 *Future Health, Inc.*, 568 F.3d 684, 702 (9th Cir. 2009).

3 Courts must consider three factors in analyzing whether a warrant is overbroad: “(1)  
 4 whether probable cause existed to seize all items of a category described in the warrant; (2)  
 5 whether the warrant set forth objective standards by which executing officers could differentiate  
 6 items subject to seizure from those which were not; and (3) whether the government could have  
 7 described the items more particularly in light of the information available . . . .” *United States v.*  
 8 *Flores*, 802 F.3d 1028, 1044 (9th Cir. 2015).

9 Vailes argues that each of these factors suggests that the warrant was overbroad. As  
 10 explained below, the Court disagrees with Vailes’ arguments.

11 **i. Whether Probable Cause Existed to Seize All Items of a Category**

12 Vailes argues that there was not probable cause to seize certain items. ECF No. 22 at 9-11.

13 First, Vailes asserts that the activities described in the affidavit did not provide probable  
 14 cause that evidence of a crime would be found on his cellphone or other electronic devices. *Id.* at  
 15 10. The Court disagrees. The warrant summarized several text message conversations between  
 16 Vailes and the undercover officer that suggested he was engaged in pandering. *See* ECF No. 22-1  
 17 at 7, 9 (Vailes and the undercover officer texted about the officer turning “tricks;” Vailes asked  
 18 for his choose up fee; and Vailes told the undercover officer to “go turn some dates”). Probable  
 19 cause existed to search Vailes’ cell phone. Whether there was probable cause to search Vailes’  
 20 other electronic devices is a harder question, but Vailes has not developed this argument. *See* ECF  
 21 No. 22 at 10 (stating only that the affidavit did not “provide probable cause that evidence of a  
 22 crime would be found on his cellphone or other electronic devices included in category C.”). *See*  
 23 *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994) (courts will not  
 24 manufacture arguments for litigants).

25 Second, Vailes also argues that there was not probable cause to search for currency,  
 26 condoms, or photos because there was no evidence that Vailes gave the officer condoms, took  
 27 cash from her, or took photographs of her. ECF No. 22 at 10-11. Again, the Court disagrees with  
 28 Vailes. Regarding condoms, Detective Perez noted that panderers often give their victims

1 condoms to use during sex acts. ECF No. 22-1 at 11. The Court finds that Detective Perez's  
2 statement, combined with all the evidence in the affidavit that Vailes was engaging in pandering,  
3 established probable cause (or a fair probability) that Vailes would have condoms. Regarding  
4 currency, the affidavit explained that Vailes' asked to pick up his choose up fee in cash (*id.* at 8);  
5 he told the undercover detective that he would expect all the money she made each night (*id.* at  
6 6); and he had other women working for him as prostitutes (*id.* at 5, 6, 8). Detective Perez also  
7 noted that it is common for panderers to possess large amounts of cash because most commercial  
8 sex customers pay in cash. *Id.* at 11. These facts established probable cause to believe that Vailes  
9 was pandering multiple women, took their money, and accordingly, would have currency related  
10 to his pandering activities. Regarding photos, Detective Perez noted that it is common for  
11 panderers to keep photos of prostitutes who work for them. *Id.* The Court finds that Detective  
12 Perez's statement, combined with all the evidence in the affidavit that Vailes was engaging in  
13 pandering, established probable cause to search for photos.

14 **ii. Whether the Warrant Provided Objective Standards for**  
15 **Differentiating Items Subject to Seizure From Those Which Were Not**

16 Vailes argues that the warrant failed to set forth objective standards by which officers  
17 could differentiate items subject to seizure from those that were not. ECF No. 22 at 11-12. Vailes  
18 argues that the warrant does not set a standard for officers to differentiate items subject to seizure  
19 from those that are ordinarily found in a home or vehicle. *Id.* at 11. In his reply, Vailes elaborates  
20 on this argument by noting that almost every home in America would contain the items subject to  
21 seizure: condoms, lubrication, bank cards, money, cellphones, computers, and documents  
22 showing who lives at the residence. *See* ECF No. 29 at 9-10. The Court agrees that most homes in  
23 America may contain these items. The Court does not agree that this means the warrant failed to  
24 provide objective standards by which officers could differentiate items subject to seizure from  
25 those that were not. In other words, just because most homes in America may have the items  
26 subject to seizure does not mean that officers did not know what items they were authorized to  
27 seize in Vailes' home. And Vailes has not otherwise explained why or how the warrant failed to  
28

1 provide objective standards by which officers could differentiate items subject to seizure from  
2 those that were not.

3 **iii. Whether the Government Could Have Described the Items More**  
4 **Particularly**

5 Vailes argues that Detective Perez could have described the items more particularly  
6 considering the information available at the time the warrant issued. ECF No. 22 at 12. However,  
7 Vailes does not provide any relevant analysis of this factor or explain how the items could have  
8 been described more particularly. *See id.* Instead, Vailes states that Detective Perez had no  
9 information that Vailes was using his home or vehicles for criminal activity. *Id.* This assertion  
10 goes to whether there was a sufficient nexus between the places to be searched and the things to  
11 be seized,<sup>9</sup> not whether Detective Perez could have described the items more particularly. Vailes  
12 also states that Detective Perez knew that Vailes was the sole occupant of the apartment. *Id.* This  
13 statement also does not go to whether the items to be seized could have been described more  
14 particularly. Finally, Vailes states that Detective Perez only had information that Vailes was  
15 pandering the undercover officer, and as such, the warrant should have been limited to items  
16 relevant to pandering the undercover officer. *Id.* This statement is factually incorrect and does not  
17 go to whether Detective Perez could have described the items more particularly. As explained  
18 above, the affidavit established probable cause that Vailes was pandering multiple women,  
19 including (at least) the undercover officer, his bottom, and another sex worker in San Bernadino.  
20 *See* ECF No. 22-1 at 5-6, 8. But even if the Detective Perez only had information that Vailes was  
21 pandering the undercover officer, Vailes does not explain how the categories of items sought to  
22 be seized could and should have been described more particularly. *See* ECF No. 22 at 12.

23 Accordingly, Vailes did not carry his burden to show that the warrant was overbroad.

24 **IV. Conclusion**


25 **IT IS THEREFORE RECOMMENDED** that Defendant's motion to suppress (ECF No.  
26 22) be DENIED.

27 \_\_\_\_\_  
28 <sup>9</sup> The Court explained above why there was a sufficient nexus between Vailes' apartment and his Range Rover and the things to be seized.

**NOTICE**

This report and recommendation is submitted to the United States district judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: January 6, 2023

  
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE